

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

## JOHNNY TREVINO,

**Defendant.**

**CASE NO. 8:08CR122**

## TENTATIVE FINDINGS

The Court has received the Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 106). The government adopted the PSR. (Filing No. 104.) The Court has reviewed the Defendant’s motion for a variance or departure. (Filing No. 105.) See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to ¶ 9 of the PSR insofar as that paragraph does not include some of the plea agreement's language regarding the Defendant's waiver of his right to appeal. The objection is denied. The plea agreement is the operative document and need not be recited in its entirety in the PSR.

The Defendant also objects to ¶¶ 26 and 27 (base offense level and enhancement pursuant to U.S.S.G. § 2L1.1(b)(2)(A)). The objections will be heard at sentencing, and the burden is on the government by a preponderance. Defense counsel appears to assume that the Defendant has the burden. If the parties need more than 30 minutes for the entire sentencing hearing, they should immediately contact Edward Champion and reschedule the hearing.

The Defendant's motion will be heard at sentencing.

IT IS ORDERED:

1. The Defendant's Objections to ¶ 9 of the Presentence Investigation Report (Filing No. 106) are denied;
2. The Defendant's Objections to ¶¶ 26 and 27 of the Presentence Investigation Report (Filing No. 106) will be heard at sentencing;
3. The Defendant's motion for variance or departure (Filing No. 105) will be heard at sentencing;
4. Otherwise the Court's tentative findings are that the Presentence Investigation Report is correct in all respects;
5. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
6. Absent submission of the information required by paragraph 5 of this Order, my tentative findings may become final; and
7. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 18<sup>th</sup> day of August, 2008.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge